



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

JUL 24 2014

OFFICE OF
COMPLIANCE AND ENFORCEMENT

FOR SETTLEMENT PURPOSES ONLY / PRIVILEGED AND CONFIDENTIAL
COMMUNICATION - SENT BY CERTIFIED MAIL RETURN RECEIPT REQUESTED

Steve Owen, President
Pacific Air Research, Inc.
660 Avenue C
White City, Oregon 97503

Re: Notice of Intent to File Administrative Complaint for Violations of the Federal Insecticide, Fungicide, and Rodenticide Act and Opportunity to Confer Prior to Filing

Dear Mr. Owen:

The U.S. Environmental Protection Agency ("EPA") has documented violations of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") by Pacific Air Research, Inc. ("PAR"). Specifically, EPA found that on October 16, 2013, PAR applied Element 4 (EPA Reg. No. 62719-40) and Weedone LV6 (EPA Reg. No. 71368-11) in a manner inconsistent with the products' labeling. The purpose of this notice is to inform you that EPA is prepared to initiate an enforcement action for these violations and to offer you the opportunity to discuss this matter with EPA prior to the filing of a complaint.

Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. Part 19 authorize EPA to assess administrative penalties for violations of Section 12 of FIFRA of up to \$750 for each violation. EPA uses the factors spelled out in FIFRA, along with the *Enforcement Response Policy for FIFRA* ("ERP"), available at <http://www2.epa.gov/sites/production/files/documents/fifra-erp1209.pdf>, to determine the amount of penalty it will seek in FIFRA enforcement actions. A copy of the ERP is enclosed. EPA has determined that an appropriate penalty to settle the violations is \$1,500.

A Summary of the Alleged Violations and Proposed Penalty, which provides information about EPA's allegations in this matter as well as an explanation of EPA's proposed penalty, is enclosed. EPA's Small Business Resources Information Sheet, which provides information on compliance assistance that may be helpful to you is also enclosed.

In general, EPA seeks an expeditious settlement of matters such as this, where the violations are corrected quickly. Accordingly, EPA is offering you the opportunity to resolve the cited violations by signing and returning the enclosed administrative consent agreement and final order ("CAFO") to EPA **within 30 days of your receipt of this offer**. The CAFO specifies the terms of settlement that EPA is willing to accept to resolve these violations.

If you accept these proposed terms of settlement, please sign the CAFO and send it to:

Juliane Matthews
Office of Regional Counsel
EPA Region 10, ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

If you return the signed CAFO within the time allotted, EPA will co-sign the consent agreement and issue the final order that assesses the agreed penalty. Once the CAFO is filed, EPA generally issues a press release announcing the settlement. If you choose not to accept the offer, EPA reserves the right to seek the maximum allowable penalty in litigation of this case.

If Pacific Air Research and EPA do not reach a settlement **within 45 days of your receipt of this offer**, EPA will file an administrative complaint, and the case will be assigned to an administrative law judge.

If you wish to schedule a meeting to discuss this matter, please contact Juliane Matthews in the Office of Regional Counsel at (206) 553-1169 **within 14 days of this offer**. EPA is willing to meet with you at our Seattle office or by conference call.

Thank you for your prompt attention to this important matter.

Sincerely,



Kelly McFadden, Manager
Pesticides and Toxics Unit

Enclosures

1. Summary of Alleged Violations and Proposed Penalty
2. Enforcement Response Policy for FIFRA
3. Small Business Resources Information Sheet
4. Consent Agreement and Final Order

cc: Juliane Matthews
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10

Chad Schultz
Pesticides and Toxics Unit
U.S. Environmental Protection Agency, Region 10

SUMMARY OF VIOLATIONS AND PROPOSED PENALTY

Pacific Air Research, Inc.

Pacific Air Research, Inc. (PAR) owns and operates a business located at 660 Avenue C, White City, Oregon 97503. PAR applies registered pesticides, or uses dilutions of registered pesticides, to provide a service of controlling pests.

On October 16, 2013, PAR applied the pesticide Accord XRT II (EPA Reg. No. 62719-556), Element 4 (EPA Reg. No. 62719-40), Oust XP (EPA Reg. No. 352-601), Polaris AC (EPA Reg. No. 228-570), and Induce (EPA Reg. No. 5905-50091) to a forestry unit owned by Crook Timberlands, LLC (Crook) called "Squaw 2013" which is located in Curry County, near Gold Beach, Oregon.

On October 16, 2013, Respondent applied the pesticides Accord XRT II and Weedone LV6 (EPA Reg. No. 71368-11) along with an adjuvant, Forest Crop Oil, to a forestry unit owned by Crook called "Squaw 08" which is located in Curry County, near Gold Beach Oregon.

On October 16, 2013, Respondent applied the pesticides Element 4 and Weedone LV6 along with an adjuvant, Forest Crop Oil, to a forestry unit owned by Joseph Kaufman, herein referred to as the "Kaufman" site, which is located in Curry County, near Gold Beach, Oregon.

Element 4 contains the active ingredient Triclopyr. The Element 4 label states in part:

- Do not apply this product in a way that will contact workers or other persons either directly or through drift. Only protected handlers may be in the area during application.
- Do not apply Element 4 directly to, or otherwise permit it to come into direct contact with, cotton, grapes, peanuts, soybeans, tobacco, vegetable crops, flowers, citrus, or other desirable broadleaf plants. Do not permit spray mists containing Element 4 to drift onto such plants.

Weedone LV6 contains the active ingredient 2,4-D. The Weedone LV6 label states in part:

- Do not apply this product in a way that will contact workers or other persons either directly or through drift. Only protected handlers may be in the area during application.
- Do not apply this product directly to, or permit spray mist to drift onto cotton, okra, grapes, tomatoes, fruit trees, vegetables, flowers or other desirable crop or ornamental plants which are susceptible to 2,4-D herbicide. Do not apply near susceptible plants since very small quantities of the 2,4-D will cause severe injury during the growing or dormant periods.

An inspector with the Oregon Department of Agriculture (ODA) conducted an investigation into PAR's October 16, 2013, applications in response to numerous complaints from people stating that they were experiencing adverse health effects after the application. During the application, one individual stated that he noticed a heavy chemical smell that began to affect his breathing and made his eyes burn. The ODA inspector collected: a) application records for all PAR applications around Gold Beach, Oregon; b) the GPS tracking information from PAR's helicopter; c) seven foliage samples from four private properties between the application sites; and d) statements from local residents. The analysis by the ODA Laboratory Services (ODA LS) showed residues of 2,4-D in one sample (140147-3B) and

triclopyr and 2,4-D in another sample (140147-2B). On January 13, 2014, Mike Odenthal, ODA Lead Investigator, requested ODA LS rerun the samples for Quality Assurance/ Quality Control purposes and to look for quantifiable results below the minimum detection limit (MDL) for all the residential samples. ODA LS reported that they found quantifiable results below the MDL for triclopyr on sample number 140147-3B. Sample 140147-3B was collected from the yard of the individual above who stated that, during the application, he noticed a heavy chemical smell that began to affect his breathing and made his eyes burn. Triclopyr is the active ingredient for Element 4 and 2,4-D is the active ingredient of Weedone LV6. These were the two pesticides PAR transported over the residents' properties in Cedar Valley from Squaw 2013 to the Kaufman site on the east side of the valley. PAR loaded the pesticides at the designated mix/load site at Squaw 2013 and, according to the GPS tracking data, flew over the Cedar Valley at least eight times to complete the treatment of the Kaufman site.

Based on the above information, EPA alleges that PAR violated Section 12(a)(2)(G) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(2)(G), on October 16, 2013 by using registered general use pesticides in a manner inconsistent with their labeling. According to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), an applicator of a general use pesticide providing a service of controlling pests is subject to a civil penalty up to \$750 for a first-time violation of FIFRA and \$1,100 for subsequent violations.

The following table summarizes the violation of FIFRA regulatory requirements alleged by EPA, and EPA's calculation of an appropriate civil penalty amount to settle this claim in accordance with the provisions of the December 9, 2009, Enforcement Response Policy for FIFRA (ERP). Please refer to the ERP for a detailed explanation of the calculation methodology.

Violation	Potential for Harm	Gravity of Violation (levels range from 1-4, where 1 is most severe, 4 is least severe)	Proposed Penalty Amount
Use of a pesticide, Element 4, in a manner inconsistent with its labeling by applying the product in a way that will contact other persons and applying the product directly to, or otherwise permitting it to come into direct contact with other desirable broadleaf plants in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).	Actual Serious Harm	Level 2	\$750
Use of a pesticide, Weedone LV6, in a manner inconsistent with its labeling by applying the product in a way that will contact other persons and applying the product directly to, or permitting spray mist to drift onto fruit trees or other desirable crop or ornamental plants which are susceptible to 2,4-D herbicide in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).	Actual Serious Harm	Level 2	\$750
Economic Benefit of Noncompliance			\$0
Initial Proposed Settlement Amount (rounded to nearest \$100)			\$1,500
Good Faith Penalty Reduction of 20%			-\$0
TOTAL PROPOSED SETTLEMENT AMOUNT			\$1,500

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2014-0141
)	
PACIFIC AIR RESEARCH, INC.)	CONSENT AGREEMENT AND
)	FINAL ORDER
WHITE CITY, OREGON)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil

Penalties,” 40 C.F.R. Part 22, EPA issues, and Pacific Air Research, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 660 Avenue C, White City, Oregon 97503.

3.2. Respondent is an applicator not included in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(2), who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served as described in Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), as defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

3.3. On October 16, 2013, Respondent applied the pesticides Accord XRT II (EPA Reg. No. 62719-556), Element 4 (EPA Reg. No. 62719-40), Oust XP (EPA Reg. No. 352-601), Polaris AC (EPA Reg. No. 228-570), and Induce (EPA Reg. No. 5905-50091) to a forestry unit owned by Crook Timberlands, LLC ("Crook") called "Squaw 2013," which is located in Curry County, Oregon.

3.4. On October 16, 2013, Respondent applied the pesticides Accord XRT II and Weedone LV6 (EPA Reg. No. 71368-11) along with an adjuvant, Forest Crop Oil, to a forestry unit owned by Crook called "Squaw 08," which is located in Curry County, Oregon.

3.5. On October 16, 2013, Respondent applied the pesticides Element 4 and Weedone LV6 along with an adjuvant, Forest Crop Oil, to a forestry unit owned by Mr. Kaufman, herein referred to as the "Kaufman" site, which is located in Curry County, Oregon.

3.6. On October 16, 2013, Respondent loaded its helicopter stationed at the Squaw 2013 site with the pesticides Element 4 and Weedone LV6 along with an adjuvant, Forest Crop Oil, for the application to the Kaufman site.

3.7. According to the aircraft GPS flight track data collected by ODA, the Respondent flew numerous trips over the Cedar Valley while transporting pesticides from the mix load site at Squaw 2013, on the western side of Cedar Valley, to the Kaufman site on the eastern side.

3.8. The aircraft GPS flight track data indicates the flight path between Squaw 2013 and Kaufman was in the vicinity of the Cedar Valley residents.

3.9. The active ingredient in Element 4 is triclopyr.

3.10. The active ingredient in Weedone LV6 is 2,4-D.

3.11. Element 4 (EPA Reg. No. 62719-40) and Weedone LV6 (EPA Reg. No. 71368-11) are each non-classified or classified as general use pesticides.

3.12. On October 23, 2013, an inspector with the Oregon Department of Agriculture (ODA) began an investigation into the Respondent's October 16, 2013, applications. ODA initiated the investigation in response to numerous complaints from local residents stating that they observed an odor during the application or were experiencing adverse health effects just after the application.

3.13. The ODA inspector collected a total of 11 foliage samples, including one sample from each treated site and seven samples (Sample Numbers; 140147-1B through 140147-7B) from four private properties in the Cedar Valley which are located between the forestry units Squaw 2013, Squaw 08 and Kaufman.

3.14. The vegetation samples were analyzed by the ODA Laboratory Services (ODA LS).

3.15. ODA LS analysis showed residues of triclopyr and 2,4-D in one sample (140147-2B) and 2,4-D in another sample (140147-3B).

3.16. On January 13, 2014, the ODA inspector requested ODA LS rerun the samples for Quality Assurance/Quality Control purposes and to look for quantifiable results below the minimum detection limit ("MDL") for all the residential samples. ODA LS reported that they found quantifiable results for triclopyr below the MDL on sample number 140147-3B. Therefore, both sample numbers 140147-2B and 140147-3B had residues of triclopyr and 2,4-D.

3.17. Sample 140147-2B was collected from the yard of an individual who reported smelling an odor near the time of the application and feeling ill later that evening.

3.18. Sample 140147-3B was collected from the yard of an individual who reported a “heavy smell of chemical” which affected his breathing and made his eyes burn near the time of the application. This individual also continued to experience symptoms for several days after the application.

3.19. The EPA approved label for Element 4 states in part:

Do not apply this product in a way that will contact workers or other persons either directly or through drift. Only protected handlers may be in the area during application.

Do not apply Element 4 directly to, or otherwise permit it to come into direct contact with, cotton, grapes, peanuts, soybeans, tobacco, vegetable crops, flowers, citrus, or other desirable broadleaf plants. Do not permit spray mists containing Element 4 to drift onto such plants.

3.20. The EPA approved label for Weedone LV6 states in part:

Do not apply this product in a way that will contact workers or other persons either directly or through drift. Only protected handlers may be in the area during application.

Do not apply this product directly to, or permit spray mist to drift onto cotton, okra, grapes, tomatoes, fruit trees, vegetables, flowers or other desirable crop or ornamental plants which are susceptible to 2,4-D herbicide. Do not apply near susceptible plants since very small quantities of the 2,4-D will cause severe injury during the growing or dormant periods.

3.21. Under FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

3.22. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying Element 4 in a manner that will contact other persons either directly or through drift and applied the product directly to, or otherwise permitted it to come into direct contact with,

cotton, grapes, peanuts, soybeans, tobacco, vegetable crops, flowers, citrus, or other desirable broadleaf plants.

3.23. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying Weedone LV6 in a manner that will contact other persons either directly or through drift and applied the product directly to, or permitted spray mist to drift onto cotton, okra, grapes, tomatoes, fruit trees, vegetables, flowers or other desirable crop or ornamental plants which are susceptible to 2,4-D herbicide.

3.24. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), this violation subjects Respondent to the assessment of a civil penalty.

3.25. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$750 for a first-time violation and \$1,100 for subsequent violations, per product, for pesticides that are non-classified or classified as general use.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,500.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Chad Schulze
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621 from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorney fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

STEVEN OWEN, President
Pacific Air Research, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties *under* FIFRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Pacific Air Research, Inc., Docket No.: FIFRA-10-2014-0141**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Juliane Matthews
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Steve Owen
Pacific Air Research, Inc.
660 Avenue C
White City, Oregon 97503

DATED this _____ day of _____, 2014.

CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10